

CCRB INVESTIGATIVE RECOMMENDATION

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|--|-------------------------------------|---------------------------|---|---|---------------------------------|
| Investigator: Daniel Casados | Team: Team # 5 | CCRB Case #: 201104532 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input checked="" type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Tuesday, 04/05/2011 6:44 PM | Location of Incident: § 87(2)(b) | Precinct: 52 | 18 Mo. SOL 10/5/2012 | EO SOL 10/5/2012 | |
| Date/Time CV Reported Tue, 04/05/2011 7:24 PM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Mon, 04/11/2011 1:40 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
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| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|--------------------------|--------|--------|---------|
| 1. SGT Robert King | 00865 | 924028 | PBBX |
| 2. POM Brandon Gembecki | 01517 | 949015 | PBBX |
| 3. POM Gary Thompson | 05000 | 949729 | PBBX |
| 4. POF Marielena Derasmo | 08644 | 948874 | PBBX |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-------------------------|-----------|--------|----------|
| 1. POF Teresa Busweiler | 26473 | 948312 | PBBX |
| 2. SGT Kimberly Motto | 02660 | 935360 | PBBX |

| Officer(s) | Allegation | Investigator Recommendation |
|-------------------------|--|-----------------------------|
| A.POM Brandon Gembecki | Abuse: PO Brandon Gembecki stopped § 87(2)(b) and § 87(2)(b) | |
| B.POM Gary Thompson | Abuse: PO Gary Thompson stopped § 87(2)(b) and § 87(2)(b) | |
| C.POF Marielena Derasmo | Abuse: PO Marielena Derasmo stopped § 87(2)(b) and § 87(2)(b) | |
| D.SGT Robert King | Force: Sgt. Robert King used physical force against § 87(2)(b) | |
| E.SGT Robert King | Off. Language: Sgt. Robert King made remarks to § 87(2)(b) based upon race. | |
| F.SGT Robert King | Discourtesy: Sgt. Robert King spoke obscenely and/or rudely to § 87(2)(b) and § 87(2)(b) | |

Case Summary

§ 87(2)(b) and § 87(2)(b) filed a complaint over the telephone with IAB on April 5, 2011, generating the original log number 11-15179 (encl. 4). The CCRB received the complaint on April 11, 2011 (encl. 5).

On April 5, 2011, at approximately 6:20 p.m., § 87(2)(b) and § 87(2)(b) were stopped in front of § 87(2)(b) in the Bronx. The following allegations resulted:

- **Allegation A—Abuse of Authority:** PO Brandon Gembecki stopped § 87(2)(b) and § 87(2)(b)
- **Allegation B—Abuse of Authority:** PO Gary Thompson stopped § 87(2)(b) and § 87(2)(b)
- **Allegation C—Abuse of Authority:** PO Marielena Derasmo stopped § 87(2)(b) and § 87(2)(b) § 87(2)(g)
- **Allegation D—Force:** Sgt. Robert King used physical force against § 87(2)(b) § 87(2)(g)
- **Allegation E—Offensive Language:** Sgt. Robert King made remarks to § 87(2)(b) based upon race. § 87(2)(g)
- **Allegation F—Discourtesy:** Sgt. Robert King spoke obscenely and/or rudely to § 87(2)(b) and § 87(2)(b) § 87(2)(g)

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b)

IAB Statement

§ 87(2)(b) provided the following telephone statement to IAB on April 5, 2011 (encl. 4). On April 5, 2011, at approximately 6:20 p.m., § 87(2)(b) and his acquaintances were approached by police officers at § 87(2)(b) and were instructed to move. § 87(2)(b) stated that § 87(2)(b) refused to take his hands out of his pockets. An officer identified by the IAB complaint as Sgt. Robert King of Patrol Borough Bronx approached § 87(2)(b) and punched him. § 87(2)(b) resisted, and Sgt. King told § 87(2)(b) to sit down. Sgt. King pushed § 87(2)(b) to the ground. § 87(2)(b) was arrested.

CCRB Testimony

§ 87(2)(b) provided a telephone statement to the CCRB on April 19, 2011 (encl. 6). He provided a sworn statement at the CCRB on April 22, 2011 (encl. 7). § 87(2)(g)

On April 5, 2011, at approximately 6:20 p.m., § 87(2)(b) went to § 87(2)(b) in the Bronx, which is a barbershop called § 87(2)(b). When he arrived, two of his acquaintances were already there, § 87(2)(b) and § 87(2)(b). The three of them stood outside in front of the barbershop waiting for their turns to get a haircut.

A few minutes later, officers identified through the investigation as PO Brandon Gembecki (a white male), PO Gary Thompson (a black male) and PO Marielena Derasmo (a white female) of Patrol Borough Bronx, who were assigned to an adjacent foot post, approached § 87(2)(b) and his acquaintances and asked them to wait inside the barbershop. They complied but went back outside a few minutes later after the officers walked away. About 10 minutes later, the officers returned. PO Thompson told the group they needed to move twice, but the group refused, stating that they did nothing wrong. Either PO Thompson or PO Gembecki—§ 87(2)(b) could not recall which—then told the group to stand against the barbershop and requested a supervisor to the location.

A few people inside the barbershop and a few people on the street began to stop and stare. § 87(2)(b) did not know the names of any witnesses. Within a couple of minutes, three more police officers arrived on scene in a marked police van. § 87(2)(b) later read the shield of the officer who was seated in the front passenger seat, “King.” The investigation determined that the officer in the front passenger seat was Sgt. Robert King. The investigation also determined that the other two officers in the van were PO Teresa Busweiler and Sgt. Kimberly Motto of Patrol Borough Bronx.

From inside the van, Sgt. King told § 87(2)(b) and his acquaintances to take their hands out of their pockets. § 87(2)(b) and § 87(2)(b) did as told, but § 87(2)(b) did not. § 87(2)(b) argued and continued to refuse after Sgt. King repeated the instruction. Sgt. King told the foot patrol officers to handcuff everyone, and they did. § 87(2)(b) could not recall who handcuffed whom. PO Busweiler, Sgt. Motto and Sgt. King stepped out of the van. Sgt. King walked up to § 87(2)(b) and put one hand around the front of § 87(2)(b)'s neck and put his other arm on § 87(2)(b)'s shoulder and pushed him down toward the ground. § 87(2)(b) held himself up and did not go to the ground. Sgt. King told § 87(2)(b) something to the effect of, “Follow orders like a dog.” Sgt. King let go of § 87(2)(b)'s neck and walked him to his van and seated him inside. Sgt. King told the foot patrol officers to issue the other two men summonses. § 87(2)(b) around this point, read Sgt. King's nameplate. PO Gembecki wrote § 87(2)(b) a summons, and at that time § 87(2)(b) read the nameplates on the uniforms of PO Gembecki and PO Thompson.

Sgt. Motto, meanwhile, had been standing by the police van. § 87(2)(b) took notice that Sgt. Motto was a white female and had a gold shield. § 87(2)(b) arrived, another of § 87(2)(b)'s acquaintances, and walked up to Sgt. Motto. § 87(2)(b) did not know where § 87(2)(b) had come from. § 87(2)(b) was on his cell phone, and he asked Sgt. Motto why § 87(2)(b) was under arrest. Sgt. Motto took § 87(2)(b)'s cell phone out of his hand and then handcuffed § 87(2)(b) and placed him inside the van with § 87(2)(b). Sgt. Motto, PO Busweiler, PO Derasmo, and Sgt. King then drove away with § 87(2)(b) and § 87(2)(b). PO Gembecki handed § 87(2)(b) a summons, and PO Thompson handed § 87(2)(b) a summons. Then everyone left.

Victim: § 87(2)(b)

- § 87(2)(b)

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on April 22, 2011 (encl. 8). § 87(2)(g)

From inside the van, Sgt. King asked § 87(2)(b) three times to take his hands out of his pockets. § 87(2)(b) each time, did not do it, asked why and said he was cold. Sgt. King approached § 87(2)(b) placed his left hand around the front of § 87(2)(b)'s neck and pressed his other hand into § 87(2)(b)'s right collar bone and tried to push him to the ground. § 87(2)(b) claimed his breathing was restricted but said he could still talk and told Sgt. King he had not done anything wrong. Sgt. King then allegedly told § 87(2)(b) "You're stupid. You have to listen to me." At the CCRB, when § 87(2)(b) was asked to repeat Sgt. King's statement, he said Sgt. King told him, "You fucking Dominican." When asked how Sgt. King knew his race or nationality, § 87(2)(b) said Sgt. King knew based on his appearance and the neighborhood.

Sgt. King had not released § 87(2)(b) by this point. Sgt. King pushed downward on § 87(2)(b) § 87(2)(b) held himself up. At the CCRB, § 87(2)(b) denied physically resisting Sgt. King. Sgt. King told § 87(2)(b) "Take a seat." § 87(2)(b) told Sgt. King that he was not a dog, implying that only dogs lie on the ground. Sgt. King told § 87(2)(b) that he is a "fucking dog." Sgt. King let go of § 87(2)(b)'s neck. § 87(2)(b) told Sgt. King he was not going to get on the ground. Sgt. King kicked at § 87(2)(b)'s right shoe to force him to the ground, but § 87(2)(b) remained standing. Sgt. King turned § 87(2)(b) around and handcuffed him and walked him to his van and sat him in the back seat. Sgt. King conferred with the other officers and then got inside the van with § 87(2)(b) in the front passenger seat. Sgt. King closed the door, and only he and § 87(2)(b) were inside the van. Sgt. King told § 87(2)(b) "You're a motherfucker." § 87(2)(b) asked Sgt. King why he was telling him this when no one else could hear. Sgt. King told § 87(2)(b) to keep quiet. § 87(2)(b) then walked up to Sgt. Motto, who was standing outside the van. This was the earliest point § 87(2)(b) had noticed his friend, § 87(2)(b) was talking on his cell phone, and he asked Sgt. Motto what § 87(2)(b) had been charged with. Sgt. Motto took his cell phone away, handcuffed him and placed him inside the van. Once inside the van, § 87(2)(b) told § 87(2)(b) he had been on the phone with their mutual friend, Yolanda Emparo. PO Derasmo, PO Busweiler and Sgt. Motto then got inside the van, and § 87(2)(b) and § 87(2)(b) were taken to the 52nd Precinct stationhouse.

At the stationhouse, an officer whom § 87(2)(b) could not describe handed him three § 87(2)(b), § 87(2)(a) 160.50 summonses. PO Derasmo's name was on the summonses. § 87(2)(b) was released a short while later. § 87(2)(b) was not released until the following day because he had an open warrant.

Complainant/Victim: § 87(2)(b)

- § 87(2)(b)

IAB Statement

On April 5, 2011, when § 87(2)(b) spoke with IAB, § 87(2)(b) provided a telephone statement to them afterwards on the same call, which was part of the same log, 11-15179 (encl. 4). § 87(2)(b) reported the same information as § 87(2)(b)

CCRB Testimony

§ 87(2)(b) provided a telephone statement to the CCRB on April 18, 2011 (encl. 9). He provided a sworn statement at the CCRB on April 22, 2011 (encl. 10). § 87(2)(g)

§ 87(2)(b) stated that, in addition to § 87(2)(b) and § 87(2)(b) he questioned the officers about why they needed to move. When Sgt. King arrived, from inside the van, he told the group members to take their hands out of their pockets, and § 87(2)(b) did not do it. Sgt. King approached § 87(2)(b) and wrapped one, but possibly both, hand(s) around § 87(2)(b)'s neck and pushed downward on § 87(2)(b). § 87(2)(b) remained standing, and Sgt. King told § 87(2)(b) "Get on the floor. That is where dogs belong." § 87(2)(b) remained standing. Sgt. King handcuffed § 87(2)(b) and walked him to the van. § 87(2)(b) and § 87(2)(b) were walked a few feet away from the van, and PO Thompson wrote him a summons. § 87(2)(b) then walked up to Sgt. Motto. This was the earliest point § 87(2)(b) had seen § 87(2)(b). § 87(2)(b) could not hear what § 87(2)(b) told Sgt. Motto. She handcuffed § 87(2)(b) and placed him in the van. The officers from the van drove away with § 87(2)(b) and § 87(2)(b).

Victim: § 87(2)(b)

- § 87(2)(b)

CCRB Testimony

§ 87(2)(b) provided a sworn statement at the CCRB on May 9, 2011 (encl. 11).

On April 5, 2011, at approximately 6:20 p.m., § 87(2)(b) was on his way to his aunt's house, who lives at § 87(2)(b) in the Bronx. On his way there, he saw his friends, § 87(2)(b) and § 87(2)(b) standing in front of the barbershop. He stopped and talked with them briefly and then left and went inside of a corner store one block away. He walked back to the barbershop about 10 minutes later, and his friends were now under the attention of about five police officers. He did not witness their stop and he did not know why they were stopped. § 87(2)(b) was sitting alone inside a police van.

§ 87(2)(b) used his cell phone to call § 87(2)(b)'s best friend, § 87(2)(b), and told her what was happening. She suggested § 87(2)(b) ask one of the officers why § 87(2)(b) was under arrest. § 87(2)(b) walked up to Sgt. Motto and told her he was on the phone with § 87(2)(b)'s sister, and he asked her what § 87(2)(b) was being charged with. Sgt. Motto asked § 87(2)(b) to pass her the phone, which he did. Sgt. Motto asked the person on the other end what precinct she was from and then said, "Oh, you're not a police officer" and disconnected the call. Sgt. Motto then told § 87(2)(b) that he was under arrest for not minding his own business. She handcuffed him and placed him in the back of the van with § 87(2)(b). Sgt. Motto did not get inside the van at this point. § 87(2)(b) denied yelling, cursing, threatening an officer or blocking traffic. He did not understand why he had been handcuffed.

A minute or so later, Sgt. King opened the van door and asked § 87(2)(b) "You trying to be funny? You want me to fuck you up? Say something. I'll come back there and fuck you up." § 87(2)(b) did not respond to Sgt. King. PO Busweiler, PO Derasmo, Sgt. King and Sgt. Motto got inside the van, and PO Busweiler drove them to the 52nd Precinct stationhouse.

At the stationhouse, PO Derasmo approached and handed him three summonses, for § 87(2)(b), § 87(2)(a) 160.50. He denied committing any of those infractions. He was released from the stationhouse with the summonses.

Attempts to Contact Civilians

A CCRB investigator called § 87(2)(b) barbershop on May 13, 2011, to find out if any employees witnessed the incident. The owner answered and said he knew of no witnesses. The undersigned investigator mailed please call letters to adjacent addresses by where the incident took place: § 87(2)(b). None of the occupants responded.

NYPD Statements:

Subject Officer: PO BRANDON GEMBECKI

- PO Gembecki, a § 87(2)(b) [REDACTED]
- On the date of the incident, PO Gembecki was assigned to Patrol Borough Bronx in the 52nd Precinct. He worked from 4:00 p.m. to 12:35 a.m. He was dressed in uniform and was assigned to a fixed foot post at the intersection of Marion Avenue and East 194th Street in the Bronx. He partnered with PO Marielena Derasmo and PO Gary Thompson.

Memo Book and Summons

According to PO Gembecki's memo book, on April 5, 2011, at 6:44 p.m., he issued § 87(2)(b), § 87(2)(a) 160.50 to § 87(2)(b) for failing to disperse at § 87(2)(b) in the Bronx (encl. 12A). The same information is on the summons (encl. 12D).

CCRB Testimony

PO Gembecki provided a sworn statement at the CCRB on June 13, 2011 (encl. 13).

On April 5, 2011, at approximately 6:20 p.m., PO Gembecki, PO Thompson and PO Derasmo were partnered together on foot at § 87(2)(b). PO Gembecki stated that the three of them were partnered together there because the immediate area had a shooting in the last few weeks. PO Gembecki and his partners noticed § 87(2)(b) and § 87(2)(b) standing in front of the barbershop for several minutes. Because some pedestrians had to walk around them and because of the crime in the area, PO Gembecki and his partners decided to tell § 87(2)(b) and his friends to move along. PO Gembecki could not recall which officer first spoke to § 87(2)(b) and his friends, but whoever it was told them the area was drug prone and had a shooting and asked them to wait inside the barbershop. The group complied. About 10 minutes later, § 87(2)(b) and his friends came back outside. The officers again returned to the group and told them they needed to disperse.

All of the group members were non-compliant and said loudly they were not leaving. PO Gembecki recalled that one of them was less cooperative than the others, but at the time of the CCRB interview, he could not recall which one. The group did not leave, so either PO Gembecki or PO Thompson asked them for their IDs. PO Gembecki planned to summons them for disorderly conduct for refusing to disperse. PO Gembecki said he did not know if a crowd ever formed because his attention was on § 87(2)(b) and his acquaintances. The group members provided their IDs. Either PO Thompson or PO Gembecki called PO Busweiler by cell phone to perform a warrant check. PO Busweiler told the officer that she and Sgt. King and Sgt. Motto were around the corner so they would drive there.

From inside the van, Sgt. King told § 87(2)(b) at least twice to take his hands out of his pockets. § 87(2)(b) did not do it. The officers got out of the van and Sgt. King walked up to § 87(2)(b) and again told him to take his hands out of his pockets. § 87(2)(b) refused, and Sgt. King grabbed § 87(2)(b) by one of his wrists and his shirt on his chest and turned him around. Sgt. King asked PO Gembecki to handcuff § 87(2)(b).

§ 87(2)(b) and he did. Sgt. King then tried to get § 87(2)(b) to sit on the ground by pressing down on his shoulders. § 87(2)(b) held himself up and refused to sit down. Sgt. King then walked § 87(2)(b) to the van and sat him inside. Sgt. King never grabbed § 87(2)(b) by his neck, and Sgt. King never cursed at § 87(2)(b) or called him a “fucking Dominican.” There was no discussion of race or nationality.

After § 87(2)(b) was placed inside the van, § 87(2)(b) walked toward the van while he was on his cell phone. This was the first time PO Gembecki had seen § 87(2)(b). Sgt. Motto had been standing by the van, and she interacted with § 87(2)(b). PO Gembecki did not know what was said between Sgt. Motto and § 87(2)(b) because he was standing several feet away at the time writing a summons. He did, however, notice that § 87(2)(b) was handcuffed and placed inside the van, but he did not know why. PO Gembecki never heard Sgt. King use profanity or threaten anyone with force. PO Thompson and PO Gembecki resumed their foot post after writing summonses, and the other officers left with § 87(2)(b) and § 87(2)(b).

Subject Officer: PO GARY THOMPSON

- *PO Thompson, § 87(2)(b)*
- *On the date of the incident, PO Thompson was dressed in uniform and was assigned to a fixed foot post at East 194th Street and Marion Avenue in the 52nd Precinct. He partnered with PO Brandon Gembecki and PO Marielena Derasmo.*

Memo Book and Summons

According to PO Thompson’s memo book, on April 5, 2011, at 6:43 p.m., he issued § 87(2)(b), § 87(2)(a) 160.50 to § 87(2)(b) for failing to disperse at § 87(2)(b) in the Bronx (encl. 14A). The same information is on the summons (encl. 14D).

CCRB Testimony

PO Thompson provided a sworn statement at the CCRB on August 10, 2011 (encl. 15). § 87(2)(g)

Subject Officer: PO MARIELENA DERASMO

- *PO Derasmo, § 87(2)(b)*
- *On the date of the incident, PO Derasmo was assigned to a fixed foot post at East 194th Street and Marion Avenue in the 52nd Precinct. She worked from 4:00 p.m. to 12:35 a.m. She was dressed in uniform, and she partnered with PO Brandon Gembecki and PO Gary Thompson.*

Memo Book and Summonses

PO Derasmo’s memo book entries indicate whom she summonsed, what the charges were and what times she issued the summonses, which is information contained on the summonses (encl. 16A). The summonses are as follows: PO Derasmo issued § 87(2)(b) three § 87(2)(b), § 87(2)(a) 160.50 summonses at § 87(2)(b). At 6:42 p.m., she issued him summons § 87(2)(b), § 87(2)(a) 160.50, at 6:50 p.m., she issued him summons § 87(2)(b), § 87(2)(a) 160.50, and at 7:10 p.m., she issued him summons § 87(2)(b), § 87(2)(a) 160.50 (encl. 16E-16F). PO Derasmo issued § 87(2)(b) three § 87(2)(b), § 87(2)(a) 160.50 summonses at § 87(2)(b). At 6:45 p.m., she issued him summons § 87(2)(b), § 87(2)(a) 160.50, at 7:00 p.m., she issued him summons § 87(2)(b), § 87(2)(a) 160.50, and at 7:15 p.m., she issued him summons § 87(2)(b), § 87(2)(a) 160.50 (encl. 16G-16H).

CCRB Testimony

PO Derasmo provided a sworn statement at the CCRB on October 27, 2011 (encl. § 87(2)(g)).

PO Derasmo stood with Sgt. Motto when she arrived on scene. PO Derasmo knew that § 87(2)(b) was ultimately handcuffed and placed inside the van, but she did not pay attention to when he was apprehended. She did not observe Sgt. King make physical contact with § 87(2)(b). She did not hear Sgt. King curse at anyone, discuss race, call anyone a dog or threaten anyone with force.

After § 87(2)(b) was placed inside the van, § 87(2)(b) whom she acknowledged was not a part of the original group who was stopped—walked up to Sgt. Motto by the van. PO Derasmo did not know where § 87(2)(b) had come from, and she did not recall if he was on his cell phone. PO Derasmo recalled that when § 87(2)(b) approached he was saying, “Those are my boys”—referring to the group members who were stopped—and was asking why there were stopped. Further, PO Derasmo said that § 87(2)(b) was loud enough to create public alarm. When PO Derasmo was asked exactly what § 87(2)(b) said that created public alarm, she said, “I don’t remember exactly what he stated.” When asked how loudly he was speaking, she said, “he was not screaming, but he was saying, ‘those are my boys.’” PO Derasmo did not speak with § 87(2)(b) and the only statement of his that she could recall him saying was “those are my boys.”

Sgt. Motto told § 87(2)(b) several times that the situation did not pertain to him so he should walk away. § 87(2)(b) did not leave. Sgt. Motto then handcuffed him and placed him inside the van. PO Derasmo later issued § 87(2)(b) three § 87(2)(b), § 87(2)(a) 160.50 summonses, one for § 87(2)(b), § 87(2)(a) 160.50.

PO Derasmo said she wrote § 87(2)(b) the § 87(2)(b), § 87(2)(a) 160.50 summons because Sgt. Motto asked him to leave and he did not, she wrote him the § 87(2)(b), § 87(2)(a) 160.50 summons for speaking loudly and she wrote him the § 87(2)(b), § 87(2)(a) 160.50 summons because people had gathered and watched what was happening and had to walk around him. When asked how many people stopped and watched, she said she was unable to estimate. PO Derasmo said it was her decision to summons § 87(2)(b) not a supervisor’s. PO Derasmo did not see Sgt. King alone with § 87(2)(b) or § 87(2)(b) and she did not hear him curse or threaten either of them with force inside the van.

Subject Officer: SERGEANT ROBERT KING

- *Sgt. King, § 87(2)(b)*
- *On the date of the incident, Sgt. King was assigned as an Impact Sergeant in the 52nd Precinct. Sgt. King was dressed in uniform, and he worked from 4:00 p.m. to 12:57 a.m. He partnered with PO Teresa Busweiler and Sgt. Kimberly Motto in a marked van, number 5429.*

Memo Book

Sgt. King made the following entries in his memo book (encl. 18): At 6:45 p.m., PO Derasmo placed two individuals under arrest at § 87(2)(b).

CCRB Testimony

Sgt. King provided a sworn statement at the CCRB on October 11, 2011 (encl. 19). § 87(2)(g)

When Sgt. King arrived, he observed that PO Thompson, PO Gembecki and PO Derasmo had three or four people stopped by a wall. One of the officers approached him in the van and told

him that the individuals were stopped because they were loitering in front of a business and that they had asked the individuals several times to move and that the individuals refused.

Sgt. King remained inside the van at first, supervising the stop. He then noticed that § 87(2)(b) was moving his hands in and out of his front pants pockets. Sgt. King declined to estimate how many times § 87(2)(b) moved his hands in and out of his pockets, stating that he did it enough times to give him “reasonable suspicion” that § 87(2)(b) was concealing a weapon. Sgt. King did not observe a bulge in one of § 87(2)(b)’s pockets. From inside the van, Sgt. King told § 87(2)(b) to remove his hands from his pockets. § 87(2)(b) responded that he was cold and refused to keep his hands out of his pockets. Sgt. King did not recall how many times he asked § 87(2)(b) to keep his hands out of his pockets, but § 87(2)(b) never complied.

Sgt. King got out of the van and approached § 87(2)(b) because § 87(2)(b)’s actions were indicative of concealing a weapon. Sgt. King grabbed § 87(2)(b)’s arms and pulled his hands out of his pockets. § 87(2)(b) resisted by stiffening his arms, but Sgt. King was still able to pull them out of his pockets. Sgt. King turned § 87(2)(b) around by his arms and handcuffed him. Sgt. King did not grab § 87(2)(b)’s neck or shoulders and he did not push down on him. He did not recall if he tried to get § 87(2)(b) to sit on the ground. However, he said it was possible that he tried to get § 87(2)(b) to sit on the ground because that it is a tactic he “commonly” uses because it ensures that the handcuffed individual cannot flee. He did not recall having any discussion with § 87(2)(b) about sitting down. § 87(2)(b) did not mention being treated like a dog, and Sgt. King did not call § 87(2)(b) a “fucking dog.” He did not curse at § 87(2)(b). He did not know § 87(2)(b)’s nationality, and he did not call him a “fucking Dominican.”

Sgt. King escorted § 87(2)(b) to the police van and sat him inside, and Sgt. King got inside the van right afterward. Sgt. King could not recall having any discussion with § 87(2)(b) inside the van. He did not curse at § 87(2)(b) inside the van. Sgt. King knew that at least one other person was placed inside the van shortly thereafter. However, Sgt. King did not know the circumstances of why any other person was placed inside the van. He did not witness any other person’s apprehension. He viewed a color photograph of § 87(2)(b) and he did not recognize him. Sgt. King did not converse with or curse at any other individuals placed inside the van. The handcuffed individuals were taken to the 52nd Precinct stationhouse and later released with § 87(2)(b), § 87(2)(a) 160.50 summonses.

Witness Officer: SERGEANT KIMBERLY MOTTO

- *Sgt. Motto, § 87(2)(b)*
- *On the date of the incident, Sgt. Motto was assigned as an Impact Sergeant in the 52nd Precinct. She worked from 3:45 p.m. to 12:42 a.m. She was dressed in uniform, and she worked in a marked van, number 5429. She partnered with PO Busweiler and Sgt. King.*

Memo Book

Sergeant Motto made the following entries in her memo book (encl. 20): At 6:40 p.m., she was requested to respond to § 87(2)(b) for administrative assistance. At 6:45 p.m., PO Derasmo placed two males under arrest for § 87(2)(b), § 87(2)(a) 160.50. At 6:47 p.m., she returned to the 52nd Precinct stationhouse with the two arrested males.

CCRB Testimony

Sgt. Motto provided a sworn statement at the CCRB on October 21, 2011 (encl. 21). § 87(2)(g)

§ 87(2)(g) When Sgt. Motto and her partners arrived on scene, the stopped males were standing with their backs against a building wall. She never learned what had started the stop. To the best of her memory, Sgt. King, from inside the van, told § 87(2)(b) to take his hands out of his pockets, and he did not comply. Sgt. King “screamed” at § 87(2)(b) telling him to take his hands out of his pockets. § 87(2)(b) still did not comply. All of the officers stepped out of the van, but once out of the van, Sgt. Motto paid no further attention to Sgt. King. Sgt. Motto did not observe what action, if any, Sgt. King took once he stepped out of the van. She did not know if Sgt. King handcuffed anyone, used force against anyone, cursed at anyone, or made racist comments toward anyone. She knew that one of the stopped males was ultimately placed in the van, but she could not recall who it was and she did not know why.

§ 87(2)(b) then walked up to Sgt. Motto while on his cell phone. She did not know where § 87(2)(b) had come from or if he was a part of the original group of males who were stopped. § 87(2)(b) told her that he was on the phone with a police officer and asked why § 87(2)(b) was under arrest. She offered to talk with that person and discerned that that person was not a police officer. Sgt. Motto could not recall what action she took with regard to § 87(2)(b) from this point. She was not sure if she or any other officer handcuffed § 87(2)(b) and placed him inside the van. At the CCRB, Sgt. Motto was informed that § 87(2)(b) was handcuffed, taken to the 52nd Precinct stationhouse and issued three § 87(2)(b), § 87(2)(a) 160.50 summonses. She guessed that § 87(2)(b) had involved himself in the situation and she told him to leave and he refused to leave. At which point, she thought he was detained. She could not recall anything specifically disorderly that § 87(2)(b) had done.

Inside the van, she did not overhear Sgt. King talking with any of the people in handcuffs. At the 52nd Precinct stationhouse, PO Derasmo issued § 87(2)(b) and § 87(2)(b) summonses. Sgt. Motto did not recall whose decision it was to summons § 87(2)(b). However, she said it was not PO Derasmo’s decision because she was so new to the command that she did not know the penal codes. Sgt. Motto thought it may have been her decision to summons § 87(2)(b).

NYPD Documents

52nd Precinct Command Log

Sergeant King verified § 87(2)(b)’s and § 87(2)(b)’s arrests. Both of their physical and mental conditions were noted as “apparently normal” (encl. 22A).

Status of Civil Proceedings

§ 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim with the City of New York as of March 26, 2012, with regard to the incident (encl. 24).

Summons/Arrest for Incident and Disposition

As of April 11, 2012, E-courts and the Office of Court Administration yield no records pertaining to the summons/arrest dispositions for § 87(2)(b) and § 87(2)(b) (encls. 25 and 26).

Civilians Criminal History

- As of April 11, 2012, Office of Court Administration, BADS and E-courts yield no records pertaining to § 87(2)(b) (encls. 25 and 26).
- § 87(2)(b) [REDACTED]

Allegation A—Abuse of Authority: PO Brandon Gembecki stopped § 87(2)(b)

and § 87(2)(b)

Allegation B—Abuse of Authority: PO Gary Thompson stopped § 87(2)(b)

and § 87(2)(b)

Allegation C—Abuse of Authority: PO Marielena Derasmo stopped § 87(2)(b)

and § 87(2)(b)

It is not in dispute that § 87(2)(b) and § 87(2)(b) were asked to move because they were standing in front of a business that had some foot traffic in front of it. It is also not in dispute that they complied when first asked to move, but not the second time.

New York State Penal Law, Section 240.20(6), states, “a person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse” (encl. 1C).

§ 87(2)(g)

Allegation D—Force: Sgt. Robert King used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) was stopped and under police custody when Sgt. King arrived on scene and that Sgt. King chose to further restrain § 87(2)(b) because he refused to keep his hands out of his pockets. Sgt. King then used force against § 87(2)(b) by trying to push him to the ground. § 87(2)(b) admittedly refused to go to the ground (even though he paradoxically denied resisting arrest). According to Patrol Guide Section 203-11, an officer can use minimum force to overcome resistance or take someone into custody (encl. 1A-1B). § 87(2)(g)

Allegation E—Offensive Language: Sgt. Robert King made remarks to § 87(2)(b)
based upon race.

While Sgt. King was pushing § 87(2)(b) toward the ground, § 87(2)(b) alleged that Sgt. King called him a “fucking dog” and a “fucking Dominican.” § 87(2)(g)

§ 87(2)(b) and § 87(2)(b) in person, did not mention that Sgt. King had cursed § 87(2)(g)

§ 87(2)(b) The witnesses did not mention that a discussion of nationality or race took place, and the officers uniformly denied that there was ever mention of race or nationality. § 87(2)(g)

Allegation F—Discourtesy: Sgt. Robert King spoke obscenely and/or rudely to § 87(2)(b) and § 87(2)(b)

Inside the van, § 87(2)(b) alleged that Sgt. King called him a “motherfucker” when no one else was around. When § 87(2)(b) got into the van, he alleged that Sgt. King said to him, “You want me to fuck you up? Say something. I’ll come back there and fuck you up.” Sgt. King denied the allegations and could not recall talking with § 87(2)(b) and § 87(2)(b) inside the van. § 87(2)(g)

§ 87(2)(b) did not mention that Sgt. King had cursed at § 87(2)(b) § 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date